

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 1076/17

Plaintiff: KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS
CAPACITY AS TRUSTEE OF THE LM MANAGED
PERFORMANCE FUND

AND

Defendant: LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS
AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN
077 208 461)

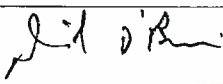
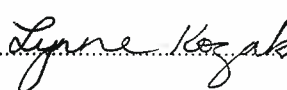
AFFIDAVIT

DAVID THOMAS O'BRIEN of MinterEllison, Level 22, Waterfront Place, 1 Eagle Street,
Brisbane in the State of Queensland, solicitor, states on oath:

1. I am a member of the firm of MinterEllison, the solicitors for the KordaMentha Pty Ltd (ACN 100 169 391) in its capacity as trustee for the LM Managed Performance Fund ('plaintiff'). I have the supervision of this proceeding on behalf of the plaintiff, and I am duly authorised to swear this affidavit on its behalf.

Correspondence with Clayton Utz

2. Clayton Utz act for the liquidators of the defendant in relation to several aspects of their administration including the negotiation of a potential settlement of this and other proceedings.
3. At 1.06pm on 12 January 2018, my firm sent Clayton Utz an email asking if they hold instructions to accept service of the plaintiff's application pursuant to s500 of the

Signed:  Page 1
Taken by: 

AFFIDAVIT OF DAVID THOMAS O'BRIEN

Filed on behalf of the Plaintiff

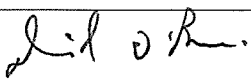
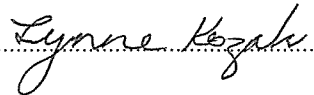
Form 46 Rule 431

MINTERELLISON
Lvl 22, Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email nadia.braad@minterellison.com
@minterellison.com
Reference DOB:NYB: 1109005

Corporations Act 2001 (Cth) ("application"), in this matter. Exhibit '**DOB-1**' is MinterEllison's email of 12 January 2018 to Clayton Utz.

4. At 10.49am on 18 January 2018, Clayton Utz responded to my firm's email of 12 January 2018, stating that they hold instructions to accept service of the application. Exhibit '**DOB-2**' is Clayton Utz's email of 18 January 2018 to MinterEllison.
5. At 3.59pm on 22 January 2018, my firm sent an email to Clayton Utz serving the application. Exhibit '**DOB-3**' is a copy of my firm's email of 22 January 2018 to Clayton Utz (excluding the attachment).
6. At 11.48am on 24 January 2018 my firm received an email from Clayton Utz asking us to send to them Mr Villani's affidavit in support of the application as soon as possible. Exhibit '**DOB-4**' is a copy of Clayton Utz's email of 24 January 2018 to MinterEllison
7. At 2.38pm on 24 January 2018, my firm sent an email to Clayton Utz about the hand delivery to them of Mr Villani's affidavit, a copy of which is exhibit '**DOB-5**'.
8. I am informed by Paayal Kishore, a solicitor in the employ of MinterEllison, and believe that in the afternoon of 24 January 2018, she delivered to Clayton Utz's Brisbane office a copy of Mr Villani's affidavit sworn on this proceeding on 24 January 2018, undercover of my firm's letter dated 24 January 2018 to Clayton Utz. Exhibit '**DOB-6**' is a copy of my firm's letter dated 24 January 2018 to Clayton Utz (excluding the enclosures).
9. At 8.47pm on 24 January 2018, Clayton Utz sent an email to MinterEllison acknowledging receipt of Mr Villani's affidavit. Exhibit '**DOB-7**' is a copy of Clayton Utz's second email of 24 January 2018, to MinterEllison.
10. At 3.12pm on 30 January 2018, MinterEllison sent an email to Clayton Utz seeking a response to MinterEllison's letter dated 24 January 2018. Exhibit '**DOB-8**' is a copy of MinterEllison's email dated 30 January 2018 to Clayton Utz.
11. At 11.46am on 31 January 2018, MinterEllison sent Clayton Utz an email (with attachments) a copy of which is exhibit '**DOB-9**'.

Signed:  Page 2 Taken by: 

12. At 12.03pm on 31 January 2018, my firm received an email from Clayton Utz (together with attachments), a true copy of which is exhibit **'DOB-10'**.
13. At 12.22pm on 31 January 2018, my firm received a further email from Clayton Utz (with attachments), a copy of which is exhibit **'DOB-11'**.

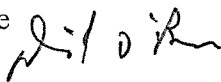
Correspondence with Tucker & Cowen

14. Tucker & Cowen act for Mr David Whyte in his capacity as the court appointed receiver of the LM First Mortgage Income Fund (ARSN 089 343 288) ('FMIF'), of which the defendant is the responsible entity.
15. At 11.08am on 16 February 2017, Tucker & Cowen sent my firm an email enquiring whether this proceeding in any way concerns the FMIF. Exhibit **'DOB-12'** is Tucker & Cowen's email of 16 February 2017 to MinterEllison.
16. At 11.49am on 16 February 2017, my firm sent an email to Tucker & Cowen, responding to their email of the same day. Exhibit **'DOB-13'** is my email of 16 February 2017 to Tucker & Cowen (excluding the attachment).

All the facts and circumstances deposed to in this affidavit are within my knowledge except where they have been deposed to from information only and my means of knowledge and sources of information appear in my affidavit.

SWORN by DAVID THOMAS O'BRIEN on 31 January 2018

at Brisbane



Deponent

in the presence of:



Solicitor/Commissioner for
Declarations/Justice of the Peace

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 12716/15

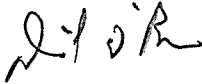
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LM MANAGED PERFORMANCE
FUND**

AND

Defendant **LM INVESTMENT MANAGEMENT
LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN
LIQUIDATION)
(ACN 077 208 461)**

CERTIFICATE OF EXHIBITS

Exhibits marked '**DOB-1** to '**DOB-13**' are the exhibits to the affidavit of DAVID THOMAS O'BRIEN sworn on 31 January 2018



Deponent



Solicitor/Commissioner for
Declarations/Justice of the Peace

CERTIFICATE OF EXHIBITS

Filed on behalf of the Plaintiff

MINTERELLISON
Lvl 22, Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email nadia.braad@minterellison.com
@minterellison.com
Reference DOB:NYB:1109005

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 12716/15

Plaintiff **KORDAMENTHA PTY LTD**
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CAPACITY AS TRUSTEE OF THE
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AND

Defendant **LM INVESTMENT MANAGEMENT**
LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN
LIQUIDATION)
(ACN 077 208 461)

LIST OF EXHIBITS

Exhibit	Document	Date	Pages
DOB1	Email MinterEllison to Clayton Utz	12.01.18	1
DOB2	Email Clayton Utz to MinterEllison	18.01.18	2
DOB3	Email MinterEllison to Clayton Utz	22.01.18	3-4
DOB4	Email Clayton Utz to MinterEllison	24.01.18	5-6
DOB5	Email MinterEllison to Clayton Utz	24.01.18	7-9
DOB6	Letter MinterEllison to Clayton Utz	24.01.18	10
DOB7	Email Clayton Utz to MinterEllison	24.01.18	11-13
DOB8	Email MinterEllison to Clayton Utz	30.01.18	14-17
DOB9	Email MinterEllison to Clayton Utz (with attachments)	31.01.18	18-25
DOB10	Email Clayton Utz to MinterEllison (with attachments)	31.01.18	26-33
DOB11	Email Clayton Utz to MinterEllison (with attachments)	31.01.18	34-41
DOB12	Email Tucker & Cowen to MinterEllison	16.02.17	42-45
DOB13	Email MinterEllison to Tucker & Cowen (excluding attachments)	16.02.17	46-49

CERTIFICATE OF EXHIBITS

Filed on behalf of the Plaintiff

MINTERELLISON
Lvl 22, Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email nadia.braad@minterellison.com
[@minterellison.com](http://minterellison.com)
Reference DOB:NYB:1109005

David O'Brien

'DOB-1'

From: Nadia Braad <Nadia.Braad@minterellison.com>
Sent: Friday 12 January 2018 01:06 pm
To: Waller, Mark; Erfurt, Chris
Cc: David O'Brien
Subject: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

Dear Mark and Chris

As you may be aware, KM(MPF) has previously commenced Supreme Court Proceeding 1076/17 against LMIM but has not yet served the claim and statement of claim.

We were hoping that settlement would have been reached by now, avoiding the need for service. Regrettably, it seems that if a settlement is to be reached it is unlikely to be finalised before proceeding 1076/17 becomes stale on 5 February 2018. Therefore, our client is in the process of preparing an application pursuant to section 500 of the Corporations Act 2001 (Cth) seeking leave to proceed against a company in liquidation (LMIM). We are proposing to ask the Court for the application to be returnable for hearing on 1 February 2018.

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Please can you let me know if you have instructions to act for LMIM in this matter, and to therefore accept service of the section 500 application.

Kind regards

Mrs Nadia Braad
Senior Associate
T +61 7 3119 6641 M +61 466 306 279
nadia.braad@minterellison.com
MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000
minterellison.com Follow us on **LinkedIn** and **Twitter**

David O'Brien

From: Erfurt, Chris <CErfurt@claytonutz.com>
Sent: Thursday 18 January 2018 10:49 am
To: Nadia Braad
Cc: David O'Brien; Waller, Mark
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

Hi Nadia,

We have instructions to accept service of the application referred to below.

Kind regards,

Chris Erfurt, Special Counsel

Clayton Utz

Level 28 Riparian Plaza, 71 Eagle Street, Brisbane QLD 4000 Australia | D +617 3292 7799 | F +617 3221 9669 | M +614 34 156 774 |
erfurt@claytonutz.com | www.claytonutz.com

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Kind regards

Mrs Nadia Braad

Senior Associate

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nadia.braad@minterellison.com

MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000

minterellison.com Follow us on **LinkedIn** and **Twitter**

David O'Brien

From: David O'Brien <David.O'Brien@minterellison.com>
Sent: Monday 22 January 2018 03:59 pm
To: Erfurt, Chris; Nadia Braad
Cc: Waller, Mark
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]
Attachments: Application.pdf

Chris,

I refer to your email of 18 January 2018, a copy of which is below.

Attached by way of service is our client's application which, as you will see, is to be heard on 1 February 2018.

We will provide you with a copy of Mr Villani's supporting affidavit shortly.

Yours
—

David O'Brien
Partner
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david.obrien@minterellison.com
MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000
minterellison.com Follow us on **LinkedIn** and **Twitter**

From: Erfurt, Chris [mailto:CErfurt@claytonutz.com]
Sent: Thursday 18 January 2018 10:49 am
To: Nadia Braad <Nadia.Braad@minterellison.com>
Cc: David O'Brien <David.O'Brien@minterellison.com>; Waller, Mark <mwaller@claytonutz.com>
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

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David O'Brien

From: Waller, Mark <mwaller@claytonutz.com>
Sent: Wednesday 24 January 2018 11:48 am
To: David O'Brien; Erfurt, Chris; Nadia Braad
Cc: Golinelli, William
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

Thanks David - can you please send Mr Villani's affidavit as soon as possible so that we can seek instructions regarding the application. When do you expect to do so?

Kind regards,
Mark

Mark Waller, Partner
Clayton Utz

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Sent: Thursday 18 January 2018 10:49 am

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Cc: David O'Brien <David.O'Brien@minterellison.com>; Waller, Mark <mwaller@claytonutz.com>

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From: Nadia Braad [<mailto:Nadia.Braad@minterellison.com>]

Sent: Friday, 12 January 2018 1:06 PM

 Waller, Mark; Erfurt, Chris

 David O'Brien

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David O'Brien

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MinterEllison

24 January 2018

BY HAND

Mr Mark Waller
Partner
Clayton Utz
Level 28 Riparian Plaza
71 Eagle Street
BRISBANE QLD 4000

Dear Mr Waller

KordaMentha Pty Ltd (ACN 100 169 391) in its capacity of Trustee of the LM Managed Performance Fund v LM Investment Management Limited (Receivers and Managers Appointed) (in liquidation) (ACN 077 208 461)
Queensland Supreme Court Proceeding No. BS1076/17 ("Proceeding")

We refer to your Mr Erfurt's email of 18 January 2018, in which he indicated that your firm has instructions to accept service of our client's application for leave to proceed under s500 of the *Corporations Act* 2001 (Cth), and to our email of 22 January 2018 serving that application.

We now enclose by way of service the affidavit of Jarrod Villani sworn today in support of the application.

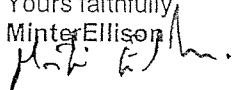
We also enclose for your ease of reference a copy of the Claim and Statement of Claim by which the Proceeding was commenced.

As you are aware, this Proceeding and several related proceedings are currently the subject of settlement negotiations. The Proceeding becomes ineffective on or about 5 February 2018, unless the Claim and Statement of Claim are served on your client by then. It is unlikely that the settlement negotiations will be completed by then and so in order to maintain the status quo our client needs to apply for leave to proceed.

We wish to assure you that our client does not require a defence from your client before the settlement negotiations have concluded.

If your client does not oppose the granting of the leave sought, and if your client wishes to avoid the cost of an appearance on 1 February 2018, please would you write to us before 1 February 2018 confirming your client's position, and we will bring your correspondence to the Court's attention on 1 February 2018.

Yours faithfully

MinterEllison


Contact: David O'Brien T: +61 7 3119 6159
F: +61 7 3119 1159 david.obrien@minterellison.com
Partner: David O'Brien T: +61 7 3119 6159
OUR REF: DOB 1109005

Level 22 Waterfront Place 1 Eagle Street Brisbane
PO Box 7844 Waterfront Place QLD 4001 Australia DX 102 Brisbane
T +61 7 3119 6000 F +61 7 3119 1000 minterellison.com

ME_144440950_1



David O'Brien

From: Waller, Mark <mwall@claytonutz.com>
Sent: Wednesday 24 January 2018 08:47 pm
To: David O'Brien
Cc: Erfurt, Chris; Nadia Braad; Golinelli, William
Subject: Re: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

Thanks David - received.

Kind regards
Mark

Mark Waller, Partner
Clayton Utz

Level 28 Riparian Plaza, 71 Eagle Street, Brisbane QLD 4000 Australia | D +617 3292 7005 | F +617 3221 9669 |
614 18 741 029 |

mwall@claytonutz.com | www.claytonutz.com

On 24 Jan 2018, at 2:38 pm, David O'Brien <David.O'Brien@minterellison.com> wrote:

Mark,

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Partner

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<image001.png>

Please consider the environment before printing this e-mail

From: David O'Brien [<mailto:David.O'Brien@minterellison.com>]

Sent: Monday, 22 January 2018 4:59 PM

To: Erfurt, Chris; Nadia Braad

Cc: Waller, Mark

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From: Erfurt, Chris [<mailto:CErfurt@claytonutz.com>]

Sent: Thursday 18 January 2018 10:49 am

To: Nadia Braad <Nadia.Braad@minterellison.com>

Cc: David O'Brien <David.O'Brien@minterellison.com>; Waller, Mark <mwallier@claytonutz.com>

Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

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Kind regards,

Chris Erfurt, Special Counsel

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 Please consider the environment before printing this e-mail

From: Nadia Braad [<mailto:Nadia.Braad@minterellison.com>]

Sent: Friday, 12 January 2018 1:06 PM

To: Waller, Mark; Erfurt, Chris

Cc: David O'Brien

Subject: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

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Kind regards

Mrs Nadia Braad

Senior Associate

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nadia.braad@minterellison.com

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David O'Brien

From: David O'Brien <David.O'Brien@minterellison.com>
Sent: Tuesday 30 January 2018 03:12 pm
To: Waller, Mark
Cc: Erfurt, Chris; Nadia Braad; Golinelli, William
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

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Are you able to let me know of your client's attitude to our client's application ?

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Clayton Utz

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Sent: Wednesday 31 January 2018 11:46 am
To: Waller, Mark
Cc: Golinelli, William
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]
Attachments: FW: LMIM - Draft order (53.3 KB)
Importance: High

Mark,

Attached is a proposed consent order that Mr Goodwin of Counsel has this morning sent to your Counsel.

Please let me know if your client is content with the proposed draft order attached to Mr Goodwin's email.


Regards

David O'Brien
Partner
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david.obrien@minterellison.com
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From: Waller, Mark [mailto:mwall@claytonutz.com]
Sent: Wednesday 31 January 2018 09:34 am
To: David O'Brien <David.O'Brien@minterellison.com>
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Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

Hi David,

Have you considered further the way forward we discussed last night?

Kind regards,
Mark

Mark Waller, Partner
Clayton Utz
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David O'Brien

From: Edward Goodwin <edward.goodwin@qldbar.asn.au>
Sent: Wednesday 31 January 2018 09:31 am
To: David O'Brien
Subject: FW: LMIM - Draft order
Attachments: 29.01.18 - Draft order.docx

fyi

Regards
Edward Goodwin

Level 30 | Santos Place | 32 Turbot Street | Brisbane Qld 4000 P +61 7 3120 9799 | edward.goodwin@qldbar.asn.au

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----- Forwarded Message

From: Edward Goodwin <edward.goodwin@qldbar.asn.au>
Date: Wed, 31 Jan 2018 09:28:10 +1000
To: <dpyle@qldbar.asn.au>
Conversation: LMIM - Draft order
Subject: LMIM - Draft order

Hi Dominic,

I refer to our telephone conversation this morning.

Please find attached the draft order.

Please let me know (preferably as soon as possible) if your client will consent to the order.

As you know I will be in court this morning so it would be good if your solicitors could let MinterEllison know as well.

Regards
Edward Goodwin

Level 30 | Santos Place | 32 Turbot Street | Brisbane Qld 4000 P +61 7 3120 9799 | edward.goodwin@qldbar.asn.au

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----- End of Forwarded Message

SUPREME COURT OF QUEENSLAND

REGISTRY
NUMBER

Brisbane
1076 of 2017

Plaintiff

KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS
TRUSTEE OF THE LM MANAGED PERFORMANCE FUND

AND

Defendant

LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)

ORDER

Before:

Date: 1 February 2018

Initiating document: Application filed 22 January 2018

THE ORDER OF THE COURT IS THAT:

1. Subject to further order, pursuant to section 500(2) of the *Corporations Act* 2001 (Cth), the plaintiff be granted leave *nunc pro tunc* to commence and to proceed with this Supreme Court of Queensland proceeding against the defendant, LM Investment Management Limited (Receivers & Managers Appointed)(In Liquidation)(ACN 077 208 461), on the condition that any judgment against the defendant will not be enforced without further leave of the Court.
2. The plaintiff serve the claim and statement of claim in this matter on or before 5 February 2018.
3. The defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant's solicitors, Clayton Utz, that a defence and any counterclaim is required to be filed.
4. Nothing in this order affects the ability of the defendant or any insurer of the defendant to argue at any trial of the proceeding or on any application to revoke the leave granted under paragraph 1, that an insurance policy does not respond to the claim.
5. The applicant plaintiff's costs and expenses of and incidental to this application be paid on the indemnity basis out of the LM Managed Performance Fund.

ORDER

Filed on behalf of the Plaintiff

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NYB DOB 1109005

Form 59 Rule 661

Signed:

Description:

David O'Brien

From: Golinelli, William <wgolinelli@claytonutz.com>
Sent: Wednesday 31 January 2018 12:03 pm
To: David O'Brien
Cc: Nadia Braad; Waller, Mark
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]
Attachments: 325383647_1.pdf; 29.01.18 - Draft order.docx

Dear David,

Please see **attached**.

Kind regards,

Will Golinelli, Lawyer (Senior)
Clayton Utz

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wgolinelli@claytonutz.com | www.claytonutz.com

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Sent: Wednesday, 31 January 2018 11:49 AM
To: 'David O'Brien'
Cc: Golinelli, William
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

Thanks David - we are seeking instructions.

From: David O'Brien [mailto:David.O'Brien@minterellison.com]
Sent: Wednesday, 31 January 2018 12:46 PM
To: Waller, Mark
Cc: Golinelli, William
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]
Importance: High

Mark,

Attached is a proposed consent order that Mr Goodwin of Counsel has this morning sent to your Counsel.

Please let me know if your client is content with the proposed draft order attached to Mr Goodwin's email.

Regards

David O'Brien
Partner
T +61 7 3119 6159 M +61 401 148 939
david.obrien@minterellison.com
MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000
minterellison.com Follow us on **LinkedIn** and **Twitter**

From: Waller, Mark [mailto:mwaller@claytonutz.com]
Sent: Wednesday 31 January 2018 09:34 am
To: David O'Brien <David.O'Brien@minterellison.com>
Cc: Golinelli, William <wgolinelli@claytonutz.com>
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

Hi David,

Have you considered further the way forward we discussed last night?

Kind regards,
Mark

Mark Waller, Partner
Clayton Utz

Level 28 Riparian Plaza, 71 Eagle Street, Brisbane QLD 4000 Australia | D +617 3292 7005 | F +617 3221 9669 | M +614 18 741 029 |
mwaller@claytonutz.com | www.claytonutz.com



Please consider the environment before printing this e-mail

From: David O'Brien [mailto:David.O'Brien@minterellison.com]
Sent: Tuesday, 30 January 2018 4:12 PM
To: Waller, Mark
Cc: Erfurt, Chris; Nadia Braad; Golinelli, William
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

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Are you able to let me know of your client's attitude to our client's application ?

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minterellison.com Follow us on **LinkedIn** and **Twitter**

From: Waller, Mark [<mailto:mwall@claytonutz.com>]
Sent: Wednesday 24 January 2018 08:47 pm
To: David O'Brien <David.O'Brien@minterellison.com>
Cc: Erfurt, Chris <CErfurt@claytonutz.com>; Nadia Braad <Nadia.Braad@minterellison.com>; Golinelli, William <wgolinelli@claytonutz.com>
Subject: Re: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

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Mark Waller, Partner

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mwall@claytonutz.com | www.claytonutz.com

On 24 Jan 2018, at 2:38 pm, David O'Brien <David.O'Brien@minterellison.com> wrote:

Mark,

A copy of Mr Villani's affidavit will have been delivered to you by now.

Please let me know if you have not received it.

Kind regards

—
David O'Brien

Partner

T +61 7 3119 6159 M +61 401 148 939

david.obrien@minterellison.com

MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000

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From: Waller, Mark [<mailto:mwall@claytonutz.com>]
Sent: Wednesday 24 January 2018 11:48 am
To: David O'Brien <David.O'Brien@minterellison.com>; Erfurt, Chris <CErfurt@claytonutz.com>; Nadia Braad <Nadia.Braad@minterellison.com>
Cc: Golinelli, William <wgolinelli@claytonutz.com>
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

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Mark Waller, Partner

Clayton Utz

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mwall@claytonutz.com | www.claytonutz.com

<image001.png>

Please consider the environment before printing this e-mail

From: David O'Brien [<mailto:David.O'Brien@minterellison.com>]
Sent: Monday, 22 January 2018 4:59 PM
To: Erfurt, Chris; Nadia Braad
Cc: Waller, Mark
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

Chris,

I refer to your email of 18 January 2018, a copy of which is below.

Attached by way of service is our client's application which, as you will see, is to be heard on 1 February 2018.

We will provide you with a copy of Mr Villani's supporting affidavit shortly.

Regards

David O'Brien
Partner
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david.obrien@minterellison.com
MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000
minterellison.com Follow us on **LinkedIn** and **Twitter**



From: Erfurt, Chris [<mailto:CErfurt@claytonutz.com>]
Sent: Thursday 18 January 2018 10:49 am
To: Nadia Braad <Nadia.Braad@minterellison.com>
Cc: David O'Brien <David.O'Brien@minterellison.com>; Waller, Mark <mwaller@claytonutz.com>
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

Hi Nadia,

We have instructions to accept service of the application referred to below.

Kind regards,

Chris Erfurt, Special Counsel
Clayton Utz
Level 28 Riparian Plaza, 71 Eagle Street, Brisbane QLD 4000 Australia | D +617 3292 7799 | F +617 3221 9669 | M +614 34 156 774 |
cerfurt@claytonutz.com | www.claytonutz.com

 Please consider the environment before printing this e-mail

From: Nadia Braad [<mailto:Nadia.Braad@minterellison.com>]
Sent: Friday, 12 January 2018 1:06 PM
To: Waller, Mark; Erfurt, Chris
Cc: David O'Brien
Subject: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

Dear Mark and Chris

As you may be aware, KM(MPF) has previously commenced Supreme Court Proceeding 1076/17 against LMIM but has not yet served the claim and statement of claim.

We were hoping that settlement would have been reached by now, avoiding the need for service. Regrettably, it seems that if a settlement is to be reached it is unlikely to be finalised before proceeding 1076/17 becomes stale on 5 February 2018. Therefore, our client is in the process of preparing an application pursuant to section 500 of the Corporations Act 2001 (Cth) seeking leave to proceed against a company in liquidation (LMIM). We are proposing to ask the Court for the application to be returnable for hearing on 1 February 2018.

We envisage that once the Court grants leave to proceed, KM(MPF) will serve the claim and statement of claim but will not require any defence until after the current settlement negotiations are concluded one way or another.

Please can you let me know if you have instructions to act for LMIM in this matter, and to therefore accept service of the section 500 application.

Kind regards

—
Mrs Nadia Braad

Senior Associate

T +61 7 3119 6641 M +61 466 306 279

nadia.braad@minterellison.com

MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000

minterellison.com Follow us on **LinkedIn** and **Twitter**



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Confidential

Email

Mr David O'Brien
Minter Ellison
David.O'Brien@minterellison.com

Email

Mrs Nadia Braad
Minter Ellison
nadia.braad@minterellison.com

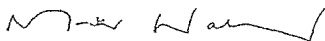
31 January 2018

Dear Colleagues

**LM Investment Management Limited (Receivers & Managers Appointed) (In Liquidation) ("LMIM")
KordaMentha Pty Ltd atf the Managed Performance Fund
Queensland Supreme Court Proceeding No. BS1076/17 ("Proceeding")**

1. Our client Liquidator consents to the draft order (**attached**) on the understanding:
 - (a) the Liquidator has not considered your client's prospects of obtaining leave *nunc pro tunc* to commence and to proceed with the Proceeding;
 - (b) irrespective of the merits of the claim, the Liquidator holds real reservations as to whether or not any insurance policy held by LMIM responds to the Proceeding, but that issue can to be adequately assessed and argued in the time allowed;
 - (c) the purpose of our client Liquidator's consent to the attached draft order is to facilitate the service of the Proceeding so as to avoid the Proceeding becoming stale on 5 February 2018; and
 - (d) as reflected in paragraph 4 of the draft order, should your client require our client to file a defence, our client reserves its right to apply to revoke the leave granted under paragraph 1 of the draft order.
2. Assuming the order cannot be made by consent on the papers, and having regard to the Liquidator's funding position, we are agreeable to your client bringing this letter to the attention of the Court so as to avoid the cost of any appearance on behalf of the Liquidator on 1 February 2018.

Yours sincerely



Mark Waller, Partner
+61 7 3292 7005
mwaller@claytonutz.com

SUPREME COURT OF QUEENSLAND

REGISTRY
NUMBER

Brisbane
1076 of 2017

Plaintiff

KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS
TRUSTEE OF THE LM MANAGED PERFORMANCE FUND

AND

Defendant

LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)

ORDER

Before:

Date: 1 February 2018

Initiating document: Application filed 22 January 2018

THE ORDER OF THE COURT IS THAT:

1. Subject to further order, pursuant to section 500(2) of the *Corporations Act* 2001 (Cth), the plaintiff be granted leave *nunc pro tunc* to commence and to proceed with this Supreme Court of Queensland proceeding against the defendant, LM Investment Management Limited (Receivers & Managers Appointed)(In Liquidation)(ACN 077 208 461), on the condition that any judgment against the defendant will not be enforced without further leave of the Court.
2. The plaintiff serve the claim and statement of claim in this matter on or before 5 February 2018.
3. The defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant's solicitors, Clayton Utz, that a defence and any counterclaim is required to be filed.
4. Nothing in this order affects the ability of the defendant or any insurer of the defendant to argue at any trial of the proceeding or on any application to revoke the leave granted under paragraph 1, that an insurance policy does not respond to the claim.
5. The applicant plaintiff's costs and expenses of and incidental to this application be paid on the indemnity basis out of the LM Managed Performance Fund.

ORDER

Filed on behalf of the Plaintiff

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NYB DOB 1109005

Form 59 Rule 661

Signed:

Description:

)

)

David O'Brien

From: Golinelli, William <wgolinelli@claytonutz.com>
Sent: Wednesday 31 January 2018 12:22 pm
To: David O'Brien
Cc: Waller, Mark
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]
Attachments: 325383647_1.pdf; 29.01.18 - Draft order.docx

Dear David,

Further to our below email, please see **attached** letter with a typographical error in paragraph 1(b) corrected.

Kind regards,

Will Golinelli, Lawyer (Senior)
Clayton Utz

Level 28 Riparian Plaza, 71 Eagle Street, Brisbane QLD 4000 Australia | D +617 3292 7067 | F +617 3221 9669 |
wgolinelli@claytonutz.com | www.claytonutz.com

Please consider the environment before printing this e-mail

From: Golinelli, William
Sent: Wednesday, 31 January 2018 12:03 PM
To: 'David O'Brien'
Cc: 'nadia.braad@minterellison.com'; Waller, Mark
Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

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Please see **attached**.

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CLAYTON UTZ **2018 AFR BEST LAWYERS**
LAW FIRM OF THE YEAR – LITIGATION

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From: Waller, Mark
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Cc: Golinelli, William
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Importance: High

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CLAYTON UTZ **2018 AFR BEST LAWYERS**
LAW FIRM OF THE YEAR – LITIGATION

Please consider the environment before printing this e-mail

From: David O'Brien [<mailto:David.O'Brien@minterellison.com>]
Sent: Tuesday, 30 January 2018 4:12 PM
To: Waller, Mark

Cc: Erfurt, Chris; Nadia Braad; Golinelli, William

Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

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Partner

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david.obrien@minterellison.com

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minterellison.com Follow us on **LinkedIn** and **Twitter**



From: Waller, Mark [<mailto:mwaller@claytonutz.com>]

Sent: Wednesday 24 January 2018 08:47 pm

David O'Brien <David.O'Brien@minterellison.com>

Cc: Erfurt, Chris <CErfurt@claytonutz.com>; Nadia Braad <Nadia.Braad@minterellison.com>; Golinelli, William <wgolinelli@claytonutz.com>

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M [+614 18 741 029](tel:+61418741029) |

mwaller@claytonutz.com | www.claytonutz.com

O. Jan 2018, at 2:38 pm, David O'Brien <David.O'Brien@minterellison.com> wrote:

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Partner

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Sent: Wednesday 24 January 2018 11:48 am

To: David O'Brien <David.O'Brien@minterellison.com>; Erfurt, Chris <CErfurt@claytonutz.com>;

Nadia Braad <Nadia.Braad@minterellison.com>

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<image001.png>

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Sent: Monday, 22 January 2018 4:59 PM

To: Erfurt, Chris; Nadia Braad

Cc: Waller, Mark

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david.obrien@minterellison.com

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From: Erfurt, Chris [<mailto:CErfurt@claytonutz.com>]

Sent: Thursday 18 January 2018 10:49 am

To: Nadia Braad <Nadia.Braad@minterellison.com>

Cc: David O'Brien <David.O'Brien@minterellison.com>; Waller, Mark <mwaller@claytonutz.com>

Subject: RE: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

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Kind regards,

Chris Erfurt, Special Counsel

Clayton Utz

Level 28 Riparian Plaza, 71 Eagle Street, Brisbane QLD 4000 Australia | D +617 3292 7799 | F +617 3221 9669 | M +614 34 156 774 | cerfurt@claytonutz.com | www.claytonutz.com

 Please consider the environment before printing this e-mail

From: Nadia Braad [<mailto:Nadia.Braad@minterellison.com>]

Sent: Friday, 12 January 2018 1:06 PM

To: Waller, Mark; Erfurt, Chris

Cc: David O'Brien

Subject: KordaMentha P/L atf the Managed Performance Fund v LMIM | Prepayment claim against LMIM | Supreme Court Proceeding Number 1076/17 [ME-ME.FID3078676]

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Kind regards

Mrs Nadia Braad

Senior Associate

T +61 7 3119 6641 M +61 466 306 279

nadia.braad@minterellison.com

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Confidential

Email

Mr David O'Brien
Minter Ellison
David.O'Brien@minterellison.com

Email

Mrs Nadia Braad
Minter Ellison
nadia.braad@minterellison.com

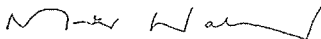
31 January 2018

Dear Colleagues

**LM Investment Management Limited (Receivers & Managers Appointed) (In Liquidation) ("LMIM")
KordaMentha Pty Ltd atf the Managed Performance Fund
Queensland Supreme Court Proceeding No. BS1076/17 ("Proceeding")**

1. Our client Liquidator consents to the draft order (attached) on the understanding:
 - (a) the Liquidator has not considered your client's prospects of obtaining leave *nunc pro tunc* to commence and to proceed with the Proceeding;
 - (b) irrespective of the merits of the claim, the Liquidator holds real reservations as to whether or not any insurance policy held by LMIM responds to the Proceeding, but that issue cannot be adequately assessed and argued in the time allowed;
 - (c) the purpose of our client Liquidator's consent to the attached draft order is to facilitate the service of the Proceeding so as to avoid the Proceeding becoming stale on 5 February 2018; and
 - (d) as reflected in paragraph 4 of the draft order, should your client require our client to file a defence, our client reserves its right to apply to revoke the leave granted under paragraph 1 of the draft order.
2. Assuming the order cannot be made by consent on the papers, and having regard to the Liquidator's funding position, we are agreeable to your client bringing this letter to the attention of the Court so as to avoid the cost of any appearance on behalf of the Liquidator on 1 February 2018.

Yours sincerely



Mark Waller, Partner
+61 7 3292 7005
mwaller@claytonutz.com

SUPREME COURT OF QUEENSLAND

REGISTRY
NUMBER

Brisbane
1076 of 2017

Plaintiff

KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS
TRUSTEE OF THE LM MANAGED PERFORMANCE FUND

AND

Defendant

LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)

ORDER

Before:

Date: 1 February 2018

Initiating document: Application filed 22 January 2018

THE ORDER OF THE COURT IS THAT:

1. Subject to further order, pursuant to section 500(2) of the *Corporations Act* 2001 (Cth), the plaintiff be granted leave *nunc pro tunc* to commence and to proceed with this Supreme Court of Queensland proceeding against the defendant, LM Investment Management Limited (Receivers & Managers Appointed)(In Liquidation)(ACN 077 208 461), on the condition that any judgment against the defendant will not be enforced without further leave of the Court.
2. The plaintiff serve the claim and statement of claim in this matter on or before 5 February 2018.
3. The defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant's solicitors, Clayton Utz, that a defence and any counterclaim is required to be filed.
4. Nothing in this order affects the ability of the defendant or any insurer of the defendant to argue at any trial of the proceeding or on any application to revoke the leave granted under paragraph 1, that an insurance policy does not respond to the claim.
5. The applicant plaintiff's costs and expenses of and incidental to this application be paid on the indemnity basis out of the LM Managed Performance Fund.

ORDER

Filed on behalf of the Plaintiff

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NYB DOB 1109005

Form 59 Rule 661

ME_144499765_1ME_144499765_1

Signed:

Description:

David O'Brien

From: Alex Nase <anase@tuckercowen.com.au>
Sent: Thursday 16 February 2017 11:08 am
To: David O'Brien; David Schwarz; Nadia Braad
Subject: SC 1076/17
Attachments: court file search - LM.PDF

Dear Colleagues,

We note that, on 6 February 2017, your client commenced a new proceeding, by way of claim, against LMIM (see attached search).

We would be grateful if you would let us know whether or not this new proceeding in any way concerns the FMIF?

regards,

 **Alex Nase**
Special Counsel

E: anase@tuckercowen.com.au
D: 07 3210 3503 | M: 0423 386 195 | T: 07 300 300 00 | F: 07 300 300 33
Level 15, 15 Adelaide Street, Brisbane | GPO Box 345, Brisbane Qld 4001
TCS Solicitors Pty Ltd. | ACN 610 321 509

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From: David O'Brien [mailto:David.O'Brien@minterellison.com]
Sent: Friday, 16 December 2016 8:12 AM
To: David Schwarz; Nadia Braad
Cc: Alex Nase
Subject: RE: KordaMentha atf LM MPF v LM Investment Management Ltd (R&M Appt'd) (in liq.) & Whyte as Receiver of LM FMIF - QSC Proceedings 8032/14 & 8034/14 [ME-ME.FID2299214]

Dear Colleagues,

We would be grateful to receive a copy of the originating process.

Thank you in anticipation.

Regards

David O'Brien

Partner

T +61 7 3119 6159 M +61 401 148 939

david.obrien@minterellison.com

MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000

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From: David Schwarz [mailto:dschwarz@tuckercowen.com.au]

Sent: Friday 16 December 2016 08:01 am

To: David O'Brien <David.O'Brien@minterellison.com>; Nadia Braad <Nadia.Braad@minterellison.com>

Cc: Alex Nase <anase@tuckercowen.com.au>

Subject: KordaMentha atf LM MPF v LM Investment Management Ltd (R&M Appt'd) (in liq.) & Whyte as Receiver of LM FMIF - QSC Proceedings 8032/14 & 8034/14

Dear Colleagues,

I have been instructed by our client to notify your client that, on 9 November 2016, our client, in the name of LMIM as RE of the FMIF, commenced a proceeding against LMIM in the Supreme Court of Queensland (BS 11560/16) ("New Proceeding").

In the New Proceeding, LMIM as RE of the FMIF, alleges that LMIM breached certain duties that it owed to members of the FMIF, and claims relief including declarations and monetary compensation.

Some of the pleaded facts founding the claims made by LMIM as RE of the FMIF against LMIM in the New Proceeding relate to an extent to some of the alleged transactions pleaded by your client in these proceedings to have been payments made under the Deeds of Assignment the subject of these proceedings.

The Claim and Statement of Claim in the New Proceeding was filed on an urgent basis, in view of the risk of any relevant limitation periods expiring, and has not yet been served. Our client has advised the solicitors for LMIM that 28 days' notice will be provided before any defence is required in the New Proceeding.

If our client would like a copy of the Claim and Statement of Claim filed in the New Proceeding for your client's information only, please let us know.

Regards

David

David Schwarz

Principal

E: dschwarz@tuckercowen.com.au

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File summary

Supreme and District Court - Search civil files

Electronic records commenced in different centres at different times. Please check the available files to ensure your search is effective.

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1076/17 KORDAMENTHA PTY LTD -V- LM INVESTMENT MANAGEMENT LIMITED

Supreme

Originated in	Currently in	Proceeding type	Date filed	Next listing
Brisbane	Brisbane	Claim-Damages	6/02/2017	

Related files

There are no Related files on this file

Parties

Last/Company name	First name	ACN	Party role	Representative
KORDAMENTHA PTY LTD		100169391	Plaintiff	MINTER ELLISON LAWYERS - BRISBANE
LM INVESTMENT MANAGEMENT LIMITED		077208461	Defendant	
LM MANAGED PERFORMANCE FUND			Trustee	

Events

There are no Events on this file

Documents

Doc no	Date filed	Document type	Document description	Filed on behalf of	Pages
1	6/02/2017	Claim		Plaintiff	

David O'Brien

From: David O'Brien
Sent: Thursday 16 February 2017 11:49 am
To: Alex Nase; David Schwarz; Nadia Braad
Subject: RE: SC 1076/17 [ME-ME.FID3078676]
Attachments: Claim.pdf

Dear Colleagues,

The proceeding involves the pre-payment of management fees by LMIM to LMA.

LMIM is sued in its personal capacity as a former trustee of MPF, not in its capacity as trustee of FMIF.

A copy of the claim and statement of claim by which the proceedings were commenced is attached.

The originating process has not yet been served.

Regards



David O'Brien
Partner
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david.obrien@minterellison.com
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From: Alex Nase [mailto:anase@tuckercowen.com.au]
Sent: Thursday 16 February 2017 11:08 am
To: David O'Brien <David.O'Brien@minterellison.com>; David Schwarz <dschwarz@tuckercowen.com.au>; Nadia Braad <Nadia.Braad@minterellison.com>
Subject: SC 1076/17

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